

FILED 08 MAY 29 14:10 USC-ORH

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KENNETH G. FITZGERALD,

Petitioner,

Civil No. 07-1842-CL

v.

REPORT AND
RECOMMENDATION

J.E. THOMAS,

Respondent.

CLARKE, Magistrate Judge.

Petitioner's amended petition alleges that the BOP did not provide him with adequate pre-release custody or release gratuities to permit him to adjust and prepare for his release from custody.

Respondent moves the court to dismiss this action. Answer/Response (#10).

Petitioner's reply to respondent's Answer was due on April 28, 2008. Petitioner did not file a reply. This matter

was taken under advisement by the court on May 12, 2008.

Respondent's Answer and exhibits establish that petitioner was released to a residential re-entry center on January 14, 2008, and released "due to full term service" on February 11, 2008.

Petitioner is no longer in federal custody and his request for a longer period of "pre-release" (ie. residential or "halfway house" custody) is moot.

Petitioner requests that the court order respondent to "follow established Bureau of Prison policies," under 18 U.S.C. § 3624(d).¹

Granting release gratuities to prisoners upon their release from federal custody is discretionary under 18 U.S.C. § 3624(d). BOP Program Statement 5873.06 guides the BOP in exercising its discretion.

Respondent's Answer and un-controverted exhibits establish that the BOP considered the factors set forth in Program Statement 5873.06 and appropriately exercised its statutory discretion under 18 U.S.C. § 3624(d) concerning petitioner's release from custody.

I find that the BOP fully complied with inmate release requirements under 18 U.S.C. § 3624(d) and "followed

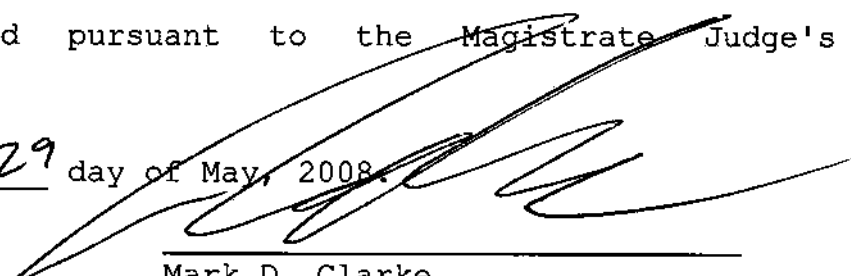
¹Petitioner's request is essentially a request for monetary relief. Monetary relief is not available under 28 U.S.C. § 2241.

established Bureau of Prison policies" with regard to petitioner's request for release gratuities.

Petitioner's Amended Petition (#6) should be denied as moot, on the merits and for failure to prosecute. This proceeding should be dismissed.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten (10) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have ten (10) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 29 day of May, 2008.



Mark D. Clarke
United States Magistrate Judge